IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 103 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NANDKISHORE SHIVLAL DAVE

Appearance:

MR HL JANI, APP for Petitioner

NOTICE SERVED for Respondent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/03/2000

ORAL JUDGEMENT

The petitioner has filed the present petition against the judgment and order, dated 27-8-87, passed by the learned Addl. Sessions Judge, Kutch-Bhuj, in Criminal Appeal No.42 of 1985.

2. The petitioner in this petition raised various

points and at the time of arguments he restricted his arguments only on the ground of jurisdiction and argued that as per Section 61-D of the Forest Act, the jurisdiction to hear and decide the appeal is vested in the Sessions Judge only and in the present case, admittedly Criminal Appeal No.42 of 1985 has been heard and finally decided by the learned Addl. Sessions Judge. I have heard learned A.P.P. Shri H.L.Jani. I have also verified the judgment and order which is under challenge in this petition. On going through the same it is seen that the said judgment and order is passed by the learned Addl. Sessions Judge and this point has been decided by this High Court in the case of State of Gujarat vs. Siddik Haji Ibrahim Patel, reported in 37 G.L.R., page 798. In the said case, this High Court has held as under :

> "Vide Sec.61-D of the Act the jurisdiction to hear and decide the appeal is conferred on the Sessions Judge using the words "Sessions Judge". It should be noted that the words "Sessions Court" are not used. The jurisdiction conferred is persona designata. Within the meaning of "Sessions Court", all the Judges of that Court, namely, Sessions Judge, Addl. Sessions Judge and Asst. Sessions Judge are covered or included, but within the meaning of "Sessions Judge" none else but Sessions Judge alone is covered. As the decision in appeal under Section 61-D of the Act is made final, it seems the Legislature in its wisdon thought it fit to confer jurisdiction only on Sessions Judge, the senior most Jusge in Sessions Court. The learned Addl. Sessions Judge, Vadodara was, therefore, not competent in law to hear and decide the appeal for want of powers. His decision is, therefore, without any jurisdiction and so it is bad in law. On this count the judgment and order of the learned Addl. Sessions Judge, Vadodara challenged in this petition are required to be quashed set aside."

2. In view of the aforesaid decision, the appeal filed by the petitioner was required to be decided by the Sessions Judge and not by the Addl. Sessions Judge. Hence, the judgment and order dated 27-8-87,passed by the learned Addl. Sessions Judge, Kutch-Bhuj, in Criminal Appeal No.42 of 1985 is set aside and the matter is remanded back to the learned Sessions Judge, Kutch-Bhuj with a direction to dispose of the same on merits. Accordingly, this petition is allowed. Rule made

absolute to the aforesaid extent.

3-3-2000 (R.P.Dholakia, J.)

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